

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WILHELM H. MICKELSEN,

Plaintiff,

-against-

BERTELSMANN, INC. and  
OFFSET PAPERBACK MFRS., INC.,

Defendants.  
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X

AFFIDAVIT

08 Civ. 10138 (TPG)  
(ECF Case)

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

LAUREN REITER BRODY, being duly sworn, deposes and says:

1. I am a member of the firm of Brody & Browne LLP, attorneys for defendants. I submit this affidavit in support of defendants' motion for summary judgment, pursuant to Rule 56, Fed. R. Civ. P., dismissing plaintiff's complaint and each of the claims asserted therein, on the grounds that there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law.

A. The Factual Background.

2. The material facts of this case are undisputed and are set forth in the accompanying Rule 56.1 Statement of Undisputed Material Facts (the "Rule 56.1 Statement"). The following materials, which are referenced in the Rule 56.1 Statement and provide the evidentiary support, are annexed hereto as exhibits:

- Exhibit 1: Excerpts from the transcript of the deposition of plaintiff Wilhelm Mickelsen (“Mickelsen”) taken on January 6, 2010.
- Exhibit 2: Plaintiff’s complaint dated November 21, 2008.
- Exhibit 3: Excerpts from the Employee Handbook of defendant Offset Paperback Manufacturers, Inc. (“Offset”) (bates-numbered DEF000248, 000251, 000272, 000276, 000277).
- Exhibit 4: Excerpts from the transcript of the deposition of David Liess (“Liess”) taken on May 13, 2010.
- Exhibit 5: Excerpts from the transcript of the deposition of Markus Dohle taken on May 11, 2010.
- Exhibit 6: Mickelsen’s “W-2 and Earnings Summary” for 2003, 2004, 2005, 2006, 2007, and 2008 (bates-numbered 0065-0069).
- Exhibit 7: Mickelsen’s Performance Review dated February 20, 1995 (bates-numbered DEF000161-000167).
- Exhibit 8: “Sales Compensation Plan -- 2007/August 13-December 31” for Mickelsen (bates-numbered 0004-0009).
- Exhibit 9: “Sales Rep Sales Compensation Plan -- 2007/July 1-December 31” for Mickelsen (bates-numbered DEF000364-000369).
- Exhibit 10: “Sales Compensation Plan -- 2007/August 6-December 31” for Mickelsen (bates-numbered DEF000243-000247).
- Exhibit 11: Emails between, inter alia, Mickelsen and Chris Smith in 2007 (bates-numbered DEF000324-000325).
- Exhibit 12: Emails between Mickelsen and Liess on August 21, 2007 (bates-numbered DEF0005).
- Exhibit 13: Business card of Mickelsen (bates-numbered 0226).
- Exhibit 14: Business cards of Mickelsen (bates-numbered 0227-0228).
- Exhibit 15: Hachette Book Group USA, Inc. (“Hachette”) Contact List (bates-numbered 0166).
- Exhibit 16: Email dated December 4, 2007 from Tressa Schwartz to Mickelsen and others with Agreement between Hachette and Offset dated December 3, 2007 (bates-numbered 0093-0134).

Exhibit 17: Emails dated February 27, 2008 between, inter alia, Mickelsen and Dylan Hoke (bates-numbered DEF0001-0002).

Exhibit 18: Excerpts from Offset's U.S. Code of Business Conduct (bates-numbered DEF000295, 000312-000314).

Exhibit 19: Mickelsen's Statement of Affirmation with Company Policy dated November 2, 1994 (bates-numbered DEF00011).

Exhibit 20: Mickelsen's Statement of Affirmation with Company Policy dated May 2, 2003 (bates-numbered DEF00012).

Exhibit 21: Bertelsmann AG 2006 Annual Report (bates-numbered 0010-0029).

Exhibit 22: Document entitled "Harmut Ostrowski 'Takes The Lead' " dated December 14, 2007 (bates-numbered 0030-0033).

Exhibit 23: Document entitled "Take The Lead In Talent Management" dated December 14, 2007 (bates-numbered 0034-0035).

Exhibit 24: Document entitled "A Company's Success Depends On Good Management" dated January 9, 2008 (bates-numbered 0039-0041).

Exhibit 25: Defendants' answer to the complaint dated January 12, 2009.

B. The Procedural History.

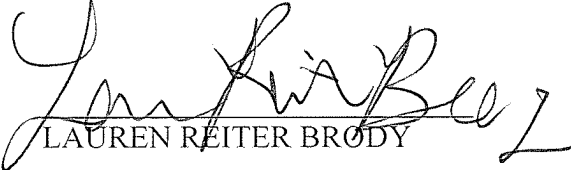
3. Mickelsen filed a charge with the Equal Employment Opportunity Commission ("EEOC") dated September 3, 2008. By notice dated November 3, 2008, the EEOC issued a right-to-sue letter.

4. This action was commenced by the filing of a complaint dated November 21, 2008 (see Ex. 2).


5. On January 12, 2009, defendants answered the complaint, denying all wrongdoing and liability (see Ex. 25).

6. The parties engaged in discovery, including the exchange of documents, responses to interrogatories, and depositions of Mickelsen, his wife, a therapist, Liess, and Dohle. Mickelsen did not depose defendant Bertelsmann, Inc.

7. For the reasons set forth in the accompanying papers, it is respectfully requested that defendants' motion be granted in its entirety.

  
LAUREN REITER BRODY

Sworn to before me this  
22nd day of September, 2010

  
Notary Public

